

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of)	
)	CC Docket No. 90-623
Computer III Remand Proceedings:)	
Bell Operating Company Safeguards;)	
and Tier 1 Local Exchange Company)	
Safeguards)	
		CC Docket No. <u>92-256</u> ✓
Application of Open Network)	
Architecture and Nondiscrimination)	
Safeguards to GTE Corporation)	

NYNEX'S REPLY COMMENTS ON RULES
GOVERNING TELEPHONE COMPANIES' USE OF CPNI

The NYNEX Telephone Companies¹ ("NYNEX") submit the following reply comments in the above-captioned proceeding.

I. INTRODUCTION

In the Public Notice, the Commission sought comment on customers' expectations of privacy and whether any changes to existing Customer Proprietary Network Information ("CPNI") rules are required to strike the best balance of competitive equity, efficiency and customers' privacy interests.

While some parties to this proceeding persist in claiming that changes to the CPNI rules are required to prevent Bell Operating Company ("BOC") dominance of the enhanced services market, the comments filed in response to the Public

¹ The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

Notice overwhelmingly demonstrate that there is robust competition in the enhanced services industry, and no changes to the Commission's CPNI rules are warranted from a competitive perspective. Moreover, if the Commission's objective is to protect privacy, it should commence a separate proceeding to consider the promulgation of rules designed specifically for that purpose.

II. THE COMMENTS PRESENT NO EVIDENCE THAT CHANGES IN THE CPNI RULES ARE NECESSARY TO PROMOTE COMPETITION.

The Commission's CPNI rules, like its other nonstructural safeguards, were adopted to promote competition in the enhanced services industry. Although critics of the CPNI rules continue to complain in this proceeding that the existing CPNI rules are inadequate to forestall BOC dominance of the enhanced services marketplace, the fact is that the enhanced services industry is flourishing.

The enhanced services industry is growing at an explosive rate, attracting an ever-increasing number of industry participants. According to the United States Department of Commerce:

U.S. information services will continue to be among the fastest growing sectors of the economy as government and industry depend on them for increasing productivity and efficiency, and in developing innovative solutions to problems. Total revenues for the information services [including electronic information services, data processing and network services] are expected to climb more than 12 percent in 1994 to \$135.9 billion.

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Electronic information services grew 16 percent in 1993 to an estimated \$13.6 billion, slightly faster than the previous year's 15

percent increase. The industry continues to attract new suppliers and customers.

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The growth of electronic information services should remain strong in 1994, with revenues up nearly 15 percent to \$15.6 billion²

Despite the removal of information services restrictions,³ it cannot reasonably be maintained that the BOCs even remotely threaten to dominate the enhanced services market. Like competitors in any other industry, the BOCs have had their successes and their failures.⁴ Competitors of the BOCs survive and prosper, belying claims that BOCs have a competitive advantage.⁵ There is no evidence that the rules are not appropriate and effective in achieving their goal.⁶

² Forecasts for Selected Manufacturing and Services Industries, U.S. Industrial Outlook 1994, U.S. Department of Commerce, January 1994, pp. 25-1 to 25-3.

³ Opinion, United States v. Western Electric Co., No. 82-0192 (D.D.C. July 25, 1991).

⁴ For example, while BOC voice messaging services have been well-received and widely deployed, BOC online gateways have virtually disappeared. See Information & Interactive Services Report, ISSN 1059-731X, April 22, 1994 (Volume 15, No. 8, p. 2.).

⁵ For example, critics do not cite one documented complaint against the BOCs in regard to CPNI abuses, or identify the loss to the BOCs of any particular enhanced services market or market share.

⁶ The CPE industry is likewise characterized by robust competition, and CPNI restrictions are wholly unnecessary to protect competition in that context. Any application of new CPNI rules for enhanced services to CPE should therefore be left to the BOCs, as the Commission did in its Third Computer Inquiry proceedings. (Computer III Remand Proceedings: Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90-623, Report and Order, released December 20, 1991, 6 FCC Rcd. 7572, ¶ 89, n.167.)

III. CHANGES TO THE CPNI RULES ARE NOT NECESSARY TO PROTECT CUSTOMER PRIVACY INTERESTS AND SHOULD NOT BE MADE.

The existing CPNI rules serve their intended purpose to promote competition, and parties to this proceeding should not be permitted to use privacy arguments to achieve a competitive advantage for themselves through unnecessary changes to the CPNI rules. The uncontradicted record in this proceeding shows that, although they were adopted to promote competition, the CPNI rules afford privacy protection that actually exceeds customers' reasonable expectations of privacy.⁷ Moreover, as the comments show, the introduction of additional proscriptions against sharing of customer data within a business would introduce inefficiencies and increase costs.⁸ The effect would be to upset the delicate balance of competitive equity, efficiency and customer privacy interests, which is achieved by the Commission's CPNI rules.

The comments in this proceeding have raised a myriad of issues that must be considered in promulgating rules designed to protect privacy. If the Commission's objective is to protect privacy, it should commence a separate proceeding to give these issues thorough consideration from the perspective of privacy protection, rather than the promotion of competition.

⁷ See, e.g., NYNEX's Comments on Rules Governing Telephone Companies' Use of CPNI ("NYNEX's Comments"), pp. 6-8; Supplemental Comments of Bell Atlantic, Attachment 2; Comments of US West Communications, Inc., p. 6; Comments of Ameritech, p. 5.

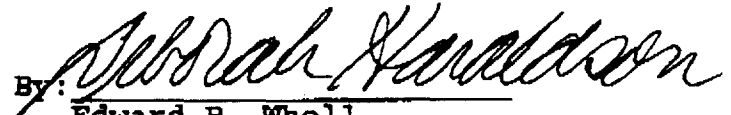
⁸ See, e.g., Comments of Ameritech, pp. 4-5; Comments of US West Communications, Inc., p. 25.

IV. CONCLUSION

For the reasons summarized above and more fully set forth in the comments in this proceeding, no changes to the CPNI rules should be made.

Respectfully submitted,

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and
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Service List for CC Docket Nos. 90-623 and 92-256, this 19th
day of May, 1994, by first class United States mail, postage
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